IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3538 of 2004
with
Special Civil Application No. 6037 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JASHVANT ENTERPRISES

Versus

SURAT MERCANTILE COOPERATIVE BANK LTD.

Appearance:
1. Special Civil Application No. 3538 of 2004
MR BAIJU JOSHI for Petitioner No. 1
MR AK CLERK for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 14/10/2004

COMMON ORAL JUDGEMENT

Rule. In both these petitions, the respective petitioners have challenged the legality and validity of the recovery notices issued by the respondent Bank for the purpose of recovery of the amount due and payable by them under the judgment and award passed by the Board of

Nominees, Surat.

2. A Summary Lavad Suit came to be filed against the petitioners of Special Civil Application No. 3538 of 2004 before the Board of Nominees, Surat and an award is passed for an amount of Rs. 5,79,886.15 ps. along with interest at the rate of 21% p.a. from 2.7.2002.

2.1. So far as Special Civil Application No. 6037 of 2004 is concerned, summary Lavad Suit came to be filed against the petitioner being Lavad Suit No. 1624 of 2002. A judgment and award is passed against the petitioner for an amount of Rs. 9,93,827/= along with interest on 30th May 2003.

2.2. It is required to be considered that in both the petitions the judgment and awards passed by the Board of Nominees have become final inasmuch as they are never challenged by the Judgment Debtors, petitioners.

3. Shri Baiju Joshi, learned advocate appearing on behalf of the petitioners, has submitted that recovery notices issued by the respondent Bank is without any jurisdiction. It is also further submitted that under Section 159 of the Gujarat Cooperative Societies Act ["the Act" for short] the powers are with the Registrar and those powers could not have been delegated by the State Government/Registrar to the Gujarat Urban Cooperative Banks Federation Limited [hereinafter referred to as "Federation"] and further powers also could not have been delegated by the Federation in favour of the respondent Bank. It is required to be noted that under Section 162 of the Act the powers of the Registrar can be delegated for the purpose of recovery and for other measures. There is a notification issued by the State Government delegating the powers of Registrar in favour of the Federation and even the Federation has also further delegated powers with regard to recovery of the amount due and payable by the petitioners under the award in favour of the respondent Bank. It is pertinent to note that in the present Special Civil Applications, the petitioners have not challenged the legality and validity of the aforesaid notifications by which powers are delegated and only recovery notices are challenged.

4. Shri Abhilash Clerk, learned advocate appearing on behalf of respondent Bank has submitted that the controversy in question is already decided by this Court in its judgment and order dated 9th July 2004 passed in Special Civil Application No. 8104 of 2004 and reliance is placed by him on the said judgment. Shri Baiju Joshi,

learned advocate appearing on behalf of the petitioners has submitted that though the controversy in question is decided by this Court in the aforesaid Special Civil Application, one point was not canvassed before the learned Single Judge, i.e., the respondent No.1 Bank is the judgment-creditor and therefore if the powers are to be exercised by the respondent No.1 Bank for recovery of the amount then it would be judging its own cause by the respondent Bank which is against the principles of natural justice. He has therefore requested either to admit the Special Civil Application and/or to refer the matter to the Division Bench.

5. Heard the learned advocates appearing on behalf of the parties. I have gone through the judgment and order passed by this Court in Special Civil Application No. 8104 of 2004. The question with regard to delegation of powers of Registrar under Section 164 of the Act for exercise of power under Section 159 of the Act and further delegation of powers by the delegatee is already considered by this Court in the aforesaid judgment and order of this Court and the contentions of the petitioners have been negatived. I fully agree with the same and adopt the reasons which are given in the aforesaid judgment. So far as the additional point which is argued by learned advocate, Shri Baiju Joshi is concerned, there is no substance in it. This Court has already held in the aforesaid judgment that powers are administrative in nature and therefore there is no question of judging its own cause by the respondent Bank. Even if we consider Rule 96 of the Gujarat Cooperative Societies Rules, at the time of recovery the respondent Bank is not required to adjudicate upon any dispute. Under Rule 96 of the Gujarat Cooperative Societies Rules, any decree-holder desiring to recover any amount or sum mentioned in sub-section (1) of Section 159 is required to make an application to the Recovery Officer and shall deposit the necessary costs on a scale specified by the Registrar. However the said application is required to be in the form specified by the Registrar and is required to be signed by the decreeholder. The decreeholder is required to indicate whether he wishes to proceed against the immovable property mortgaged to the decree-holder or other immovable property or to secure the attachment of immovable property and on receipt of such application the Recovery Offier is required to verify the correctness or genuineness of the particulars setforth in the application with the record only and nothing further is requried to be done except for the purpose of taking steps for recovery. Therefore considering the provisions of Rule 96, it is clear that it is only an administratie

function which is required to be performed by the Recovery Officer for the purpose of recovery of the amount which is due and payable by the judgment-debtor pursuant to the award passed by the Board of Nominees and/or any other competent authority. Even this Court, in the aforesaid Special Civil Application No. 8104 of 2004, has considered and held that functioning of Recovery Officer is only administrative in nature. In that view of the matter, the contention on behalf of the petitioner is required to be rejected.

6. In view of the judgment and order dated 9.7.2004 passed by the learned Single Judge of this Court in Special Civil Application No. 8104 of 2004, and for the reasons stated in the said judgment and order the present Special Civil Applications are required to be dismissed and are accordingly dismissed. The ad-interim relief grabted earlier stands vacated forthwith.

rmr. [M.R. Shah, J.]